NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

STEVE JEROD HOLDER, DOC #108004, Appellant, v. STATE OF FLORIDA, Appellee.	)	Case No. 2D16-2082

Opinion filed December 29, 2017.

Appeal from the Circuit Court for Hillsborough County; Michelle Sisco, Judge.

Steve Jerod Holder, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Lisa Martin, Assistant Attorney General, Tampa, for Appellee.

SILBERMAN, Judge.

Steve Jerod Holder seeks review of the order denying his motion for postconviction relief which was filed under Florida Rule of Criminal Procedure 3.850. Holder was found guilty of sexual battery with a deadly weapon and false imprisonment in 2009 after a jury trial. Holder argues that the postconviction court erred in summarily denying claim three of his motion for failure to effectively allege prejudice. We agree

and reverse and remand for reconsideration of this facially sufficient claim. Holder also argues that the court erred in denying claims one and two after an evidentiary hearing. Finding no error, we affirm the denial of these claims without further comment.

In claim three, Holder asserted that trial counsel was ineffective by failing to object to the Allen[1] charge the trial court gave to the deadlocked jury. Holder alleged that the court told the jurors that they had to stay as long as it took to reach a verdict and could not go home until they did so. In his original rule 3.850 motion, Holder alleged he was prejudiced by the omission because an objection would have preserved the issue for appellate review. After affording Holder an opportunity to amend, the postconviction court again concluded that he failed to effectively allege prejudice and denied the claim.

It is error for a trial court to instruct a deliberating jury in a manner so as to coerce them into reaching a verdict. Thomas v. State, 748 So. 2d 970, 976 (Fla. 1999). The court should not set forth "coercive deadlines" and make "threats of marathon deliberations" when giving an Allen charge. Monforto v. State, 28 So. 3d 65, 68 (Fla. 2d DCA 2009) (quoting Young v. State, 711 So. 2d 1379, 1379 (Fla. 2d DCA 1998)). And counsel's failure to object to such an instruction can constitute ineffective assistance. See Bruno v. State, 807 So. 2d 55, 66 (Fla. 2001).

The postconviction court correctly determined that Holder could not establish prejudice by asserting that counsel's omission affected his appellate rights. See Bradley v. State, 33 So. 3d 664, 683 n.20 (Fla. 2010). However, Holder amended his claim to also allege, "Such threats spooked the individual juriors [sic] into convicting

[1]Allen v. United States, 164 U.S. 492 (1896).

the defendant to avoid such fate [deliberating all night]." We conclude this is a sufficient allegation of prejudice. See id. at 672 ("Prejudice is met only if there is a reasonable probability that 'but for counsel's unprofessional errors, the result of the proceeding would have been different.' " (quoting Strickland v. Washington, 466 U.S. 668, 694 (1984))). We therefore reverse and remand for reconsideration of this claim on the merits.

Affirmed in part, reversed in part, and remanded.

LaROSE, C.J., and MORRIS, J., Concur.